

MILK (AMENDMENT) ACT.

Act No. 5, 1942.

George VI.
No. 5, 1942.

An Act to provide for the reconstitution of the Milk Board; to extend the provisions of the Milk Act, 1931-1936, as amended by subsequent Acts, in relation to the vesting of milk in the Milk Board; for these and certain other purposes to amend the Milk Act, 1931-1936, and certain other Acts; and for purposes connected therewith. [Assented to, 21st May, 1942.]

BE it enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows :—

Short title
and
citation.

1. (1) This Act may be cited as the "Milk (Amendment) Act, 1942."

(2) This Act shall be read and construed with the Milk Act, 1931-1936, as amended by subsequent Acts.

(3) The Milk Act, 1931-1936, as so amended, is in this Act referred to as the Principal Act.

(4) The Principal Act, as amended by this Act, may be cited as the Milk Act, 1931-1942.

2.

2. (1) Upon a day to be appointed by the Governor and notified by proclamation published in the Gazette (which day is in this Act referred to as the "appointed day") the Milk Board shall be reconstituted and shall consist of three members who shall be appointed in accordance with section seven of the Principal Act as amended by this section.

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Reconstitu-
tion of the
Milk Board.

(2) (a) Nothing contained in this section shall prejudice or affect in any way the continuity of the body corporate constituted under Part II of the Principal Act but the same shall continue notwithstanding the provisions of this section.

(b) The said body corporate shall continue and shall be deemed always to have continued notwithstanding that there are or have been at any time or times vacancies in the offices of all of the members of the body corporate or of any one or more of them.

(3) (a) The term of office of the members of the Milk Board in office on the fourteenth day of April, one thousand nine hundred and forty-two, is hereby extended for a period expiring on the appointed day.

(b) This subsection shall be deemed to have commenced upon the fourteenth day of April, one thousand nine hundred and forty-two.

(4) (a) For the purposes only of the appointment of persons to be members of the Milk Board as reconstituted under this section, and of any matters necessary for or incidental to such appointment or reconstitution the provisions of subsection five of this section shall commence on the day upon which the assent of His Majesty to this Act is signified.

(b) The persons so appointed shall assume their offices as members of the Milk Board upon the appointed day; and on that day the provisions of subsection five of this section shall come into force for all purposes.

(5) The Principal Act is amended—

- (i) by omitting from subsection one of section seven all words following the words "which shall" and by inserting in lieu thereof the words "have and may exercise and discharge the powers, authorities,

Amendment
of Act No.
59, 1931.
Sec. 7.
(Milk
Board.)

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authorities, duties and functions conferred and imposed upon the Board by this Act.

In the exercise and discharge of such powers, authorities, duties and functions, the Board shall be subject in all respects to the control and direction of the Minister."

- (ii) by inserting at the end of subsection two of the same section the words "The member appointed as representative of dairymen shall be a person nominated in accordance with the regulations by dairymen registered under this Act";
- (iii) by omitting subsection three of the same section and by inserting in lieu thereof the following subsections:—

(3) (a) The members of the Board shall be appointed by the Governor.

(b) Subject to this Act the term of office of a member of the Board shall be seven years.

(c) Upon the expiration of the term of office of a member of the Board he shall be eligible from time to time for reappointment.

(d) If the office of a member of the Board becomes vacant otherwise than by reason of the expiration of his term of office, the person appointed to fill the vacant office shall, subject to this Act, hold office for the remainder of the unexpired term of the vacant office.

(3A) (a) The members of the Board shall be paid such annual salary as may be determined by the Governor.

Further amendment of Act No. 59, 1981.
Secs. 15, 16, 17, 18, 19, and 20.

3. (1) The Principal Act is further amended—

- (a) by omitting sections fifteen, sixteen, seventeen, eighteen, nineteen and twenty, and by inserting in lieu thereof the following new section:—

15. Such officers and employees as may be necessary for the due administration of this Act shall be appointed under and shall be subject to the provisions of the Public Service Act, 1902, as amended by subsequent Acts.

Officers and employees.

Sec. 40.

- (b) by omitting section forty.

(2)

(2) All officers and employees holding office as such under the Principal Act immediately before the commencement of this section shall continue to hold such office in all respects as if they had been appointed under section fifteen of the Milk Act, 1931-1942, as inserted by subsection one of this section, and shall during their continuance in such office be subject to the provisions of the Public Service Act, 1902, as amended by subsequent Acts. No. 5, 1942.

Service of any such officer or employee as an officer and/or employee of the Milk Board and/or as an employee of the Metropolitan Milk Board shall count as service for the purposes of section thirteen of the Public Service (Amendment) Act, 1919: Provided that no such officer or employee shall be entitled to claim benefits under the Public Service Act, 1902, as well as under any other Act in respect of the same period of service.

(3) Any officer or employee of the Public Service whose services were transferred under the provisions of the Principal Act to the Milk Board and who holds office as such officer or employee immediately before the commencement of this section, shall have and retain any rights accrued or accruing to him under the Public Service Act, 1902, or any Act amending that Act, or under any section of the Principal Act repealed by this section, and service with the Milk Board shall be deemed continuous service within the meaning of the Public Service Act or any Act amending that Act.

(4) Any officer of the Milk Board who is, immediately before the commencement of this section, contributing to the State Superannuation Fund shall continue to contribute to the said Fund, and service with the Milk Board shall be deemed continuous service within the meaning of the Public Service Act, 1902, and any Acts amending the same.

(5) The Public Service Board shall as soon as practicable after the commencement of this section make arrangements whereby the work of supervision and inspection which immediately before such commencement was carried out by officers appointed by the Governor upon the recommendation of the Milk Board or by employees of the Milk Board, shall be carried out by officers

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No. 5, 1942. officers or employees of the Department of Agriculture or of the Department of Public Health. An officer or employee of either of such departments shall, when carrying out such work be deemed to be an officer of the Board for the purposes of the Milk Act, 1931-1942.

(6) The Milk Board shall pay to the departments concerned contributions towards the salaries and expenses of officers or employees of such departments carrying out the work of supervision and inspection referred to in subsection five of this section or carrying out any other work on behalf of or by arrangement with the Board.

Such contributions shall be of such amounts and payable at such times as may be agreed upon between the Milk Board and the department concerned or, in default of agreement, as may be determined by the Governor.

(7) This section shall commence upon a date to be appointed by the Governor and notified by proclamation published in the Gazette.

4. The Principal Act is further amended by inserting after section twenty-six the following new section:—

Further
amendment of
Act No. 59,
1931.
New sec. 26A.

Further
powers
of vesting.

26A. (1) (a) This section shall apply to and in respect of milk (including cream) which is sold or to be sold for use in the manufacture of any commodity within any milk distributing district or producing district, and shall so apply whether such milk or cream is in its original form, or has been concentrated, condensed, dried or treated.

(b) In this section—

“Manufacture” means manufacture for sale.

“Specified” means specified in a proclamation under this section.

(2) The Governor may from time to time by proclamation published in the Gazette declare that on and after a day to be appointed in the proclamation milk to which this section applies shall be vested in the Board.

(3) Any such proclamation may be made—

(a) generally in relation to all milk, or

(b)

- (b) in relation to milk which is supplied for use in the manufacture of a specified commodity, or
- (c) in relation to milk which is supplied for use in connection with the manufacture of commodities at any specified place or within any specified area, or
- (d) in relation to milk which is supplied for use in connection with the manufacture of a specified commodity at any specified place, or within any specified area.

(4) Any proclamation made under this section may be amended or revoked by a subsequent proclamation.

(5) No proclamation under this section shall apply to milk produced and retailed directly by a dairyman on his own behalf.

(6) From and after the day appointed in any proclamation under this section all milk to which such proclamation relates shall become vested in and be the absolute property of the Board, freed from all mortgages, charges, liens, pledges, interests and trusts affecting the same, and the rights and interests of every person in such milk shall thereupon be taken to be converted into a claim for payment therefor.

(7) From and after the day appointed in any proclamation under this section, any reference to milk in any of the provisions of this Act shall be construed as including a reference to milk to which such proclamation relates, and the provisions of this Act shall apply accordingly:

Provided that for the purposes of such application—

- (a) the definition of "Dairy premises" in section four of this Act shall be read as if all words following the words "producing milk" were omitted therefrom;
- (b) the definition of "Milk" in the same section shall be read as if the words "and to milk

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- or cream to which a proclamation under section 26A of this Act relates" were inserted at the end of the definition;
- (c) the definition of "Milk store" in the same section shall be read as if the words "or producing district" were inserted after the words "distributing district";
 - (d) the definition of "Milk vendor" in the same section shall be read as if the words "or producing district" were inserted after the words "distributing district";
 - (e) the definition of "To sell" in the same section shall be read as if the words "and refers only to selling for human consumption" were omitted therefrom;
 - (f) section twenty-two of this Act shall be read as if all words following the words "distribution of milk" were omitted therefrom;
 - (g) paragraph (e) of subsection two of section twenty-three of this Act shall be read as if the words "or producing districts" were inserted after the words "distributing districts";
 - (h) subparagraph (i) of paragraph (b) of subsection three of the same section shall be read as if the words "for use or consumption within a milk distributing district" were omitted therefrom;
 - (i) subsection one of section twenty-seven of this Act shall be read as if the words "twenty-six of this Act all milk supplied for consumption within the milk distributing district or sub-district thereof specified in the proclamation" were omitted therefrom, and the words and symbols "26A of this Act, all milk to which the proclamation relates" were inserted in lieu thereof;
 - (j) subsection two of the same section shall be read as if all words following the words "delivered and accepted" were omitted therefrom;
 - (k)

- (k) subsection three of the same section shall be read as if all words commencing with the words "twenty-six of this Act" down to and including the words "specified in the proclamation" were omitted therefrom, and the words and symbols "26A of this Act, any dairyman who supplies, sells, or delivers milk to which the proclamation relates" were inserted in lieu thereof;
- (l) subsection one of section thirty-two of this Act shall be read as if the words "for consumption or use within any milk distributing district to which this Act applies" were omitted therefrom, and the words and symbols "to which a proclamation under section 26A of this Act relates" were inserted in lieu thereof;
- (m) subsection one of the same section shall be read as if the words "a proclamation under section twenty-six of this Act" were omitted therefrom and the words "such proclamation" were inserted in lieu thereof;
- (n) subsection four of section thirty-six of this Act shall be read as if the words "for consumption or use within any milk distributing district" were omitted therefrom.

5. The Principal Act is further amended—

- (a) (i) by omitting subsection one of section twenty-three and by inserting in lieu thereof the following subsection:—

(1) The Board may from time to time, after inquiry held in the manner prescribed by regulations, determine the minimum price or prices which may be paid to a dairyman for milk.

- (ii) by inserting in paragraph (b) of subsection two of the same section after the word "thereof" the words "or in respect of different purposes for which the milk is to be used";

(iii)

Further amendment of Act No. 59, 1931.

Sec. 23.
(Fixation of prices.)

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- (iii) by omitting from paragraph (c) of the same subsection the word "maximum";
 - (iv) by omitting from paragraph (e) of the same subsection the words "maximum wholesale or" and by inserting in lieu thereof the words "wholesale prices or different maximum";
 - (v) by inserting in the same paragraph after the word "thereof" the words "or in respect of different purposes for which the milk is to be used";
 - (vi) by inserting at the end of the same subsection the following new subsection:—
 - (2A) A determination or fixation of any prices under this section may be made at such times as the Board, with the approval of the Minister may appoint, and shall if the Minister so directs be made at any time specified by him.
 - (vii) by omitting subparagraph (ii) of paragraph (b) of subsection three of the same section, and by inserting in lieu thereof the following subparagraph:—
 - (ii) sells milk by retail at a price exceeding the maximum price so notified in respect of such milk, or sells milk by wholesale at a price other than the price notified in respect of such milk; or
- Sec. 25.
(Powers of
the Board.)
- (b) (i) by omitting from paragraph (a) of section twenty-five the words "or by the Board or by a veterinary surgeon approved by the Board";
 - (ii) by inserting after paragraph (j) of the same section the following new paragraph:—
 - (k) prohibit the use by any milk vendor in connection with his business as such of any advertisement, description, sign, notice, device or representation in the nature of an advertisement, which does not correctly describe or represent the milk sold,
- or**

or the services offered by such milk vendor. **No. 5, 1942.**

- (c) (i) by inserting after subsection one of section twenty-eight the following new subsection:—
- Sec. 28.
(Delivery of milk to the Board.)
- (1A) Every delivery of milk to the Board shall, for the purposes of the Pure Food Act, 1908, as amended by subsequent Acts, be deemed to be a sale of that milk to the Board by the dairyman in whose name such milk was delivered, and the provisions of that Act as so amended and of any regulations made thereunder shall apply accordingly.
- (ii) by inserting in subsection three of the same section after the word "delivery" the words "and as to the purpose for which such milk is to be used";
- (d) (i) by inserting in subsection two of section thirty-six after the word "surrendered" the words "and unless otherwise provided by the by-laws";
- Sec. 36.
(Duration of certificate.)
- (ii) by omitting from subsection five of the same section the words "the Minister or the Director of Dairying or";
- (e) by inserting at the end of section thirty-seven the following new subsection:—
- Sec. 37.
(Refusal and cancellation of registration.)
- (4) Before arriving at an opinion upon the matters referred to in paragraph (c) of subsection one of this section the Board shall cause an inspection to be carried out by an officer or employee of the Department of Agriculture or the Department of Public Health and shall have regard to reports furnished to it by the officer or employee carrying out such inspection.
- (f) (i) by omitting paragraph (e) of section thirty-nine;
- Sec. 39.
(Functions of the Board.)
- (ii) by inserting after paragraph (f) of the same section the following new paragraphs:—
- (g) take all such steps as may be reasonably practicable to ensure that

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a retail supply of raw milk shall be available in all parts of a distributing district to any consumers who may require the same;

(h) report to and confer with the Minister upon all matters referred to in the preceding paragraphs of this section, or generally affecting the administration of this Act, and recommend such amendments of the law as to it may seem advisable;

Sec. 76.
(By-laws.)

(g) by inserting after paragraph (n) of subsection one of section seventy-six the following new paragraph:—

(n1) in relation to any premises, person or matter in any case where by this Act the Board is authorised or permitted to require, prohibit, regulate, or determine, or call for or obtain information or returns.
